

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariel Courage	Team: Squad #6	CCRB Case #: 201605363	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/07/2016 9:41 PM	Location of Incident: West 143rd Street and Lenox Avenue	Precinct: 32	18 Mo. SOL 12/7/2017	EO SOL 12/7/2017	
Date/Time CV Reported Tue, 06/21/2016 9:34 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/21/2016 9:34 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POF Margaret Bauert	08181	952451	032 PCT
3. POM Christophe Wintermute	03805	953574	032 PCT
4. POM Joseph Licata	06437	954065	032 PCT
5. POM Steven Baio	18830	958282	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Licata	Abuse: Police Officer Joseph Licata stopped § 87(2)(b)	
B.POM Joseph Licata	Abuse: Police Officer Joseph Licata frisked § 87(2)(b)	
C.POF Margaret Bauert	Abuse: Police Officer Margaret Bauert questioned § 87(2)(b)	
D.POF Margaret Bauert	Abuse: Police Officer Margaret Bauert searched § 87(2)(b)'s backpack.	
E. Officers	Abuse: Officers stopped § 87(2)(b)	
	§ 87(4-b) § 87(2)(g)	
	§ 87(4-b) § 87(2)(g)	
	§ 87(4-b) § 87(2)(g)	
	§ 87(4-b) § 87(2)(g)	
	§ 87(4-b) § 87(2)(g)	
	§ 87(4-b) § 87(2)(g)	

### Case Summary

On June 21, 2016, § 87(2)(b) filed this complaint online with the CCRB on behalf of her son, § 87(2)(b) (BR 01).

On June 7, 2016, at approximately 9:41 p.m., § 87(2)(b) was attending a basketball game at Colonel Charles Young Playground, which runs from West 143<sup>rd</sup> Street to West 145<sup>th</sup> Street between Lenox Avenue and Harlem River Drive in the park, when shots were fired.

§ 87(2)(b) fled at the sound of the shots southbound on the west side of Lenox Avenue away from the park. As § 87(2)(b) reached the northwest corner of West 143<sup>rd</sup> Street and Lenox Avenue, a police officer, identified by the investigation as PO Joseph Licata, asked him, “Why are you running?” PO Licata tripped § 87(2)(b). § 87(2)(b) began to stumble, at which point a second officer, identified by the investigation as PO Steven Baio, gripped § 87(2)(b) by the straps of his backpack and brought him fully onto the ground (**Allegation A**). § 87(2)(b) landed on his outstretched hands, causing a fracture to the bone on the outside edge of his right hand, a bruise to his left knee, and a bruise to his right hip.

PO Bauert and PO Wintermute then responded to the scene. PO Licata handcuffed § 87(2)(b) and frisked his waistband (**Allegation B**). A crowd began to gather on scene, and § 87(2)(b) was placed into PO Bauert’s police vehicle while still wearing his backpack. PO Bauert then requested § 87(2)(b) permission to search his backpack and did so (**Allegation C and D**). When the search yielded negative results for contraband, § 87(2)(b) was released without summons or arrest.

Another individual, identified by the investigation as § 87(2)(b) was also stopped by unidentified officers (**Allegation E**).

§ 87(4-b) § 87(2)(g)

The investigation obtained several files video footage of this incident from Grini’s Grill, a restaurant located at 100 West 143<sup>rd</sup> Street, only two of which are relevant to this investigation (BR 02 to 05):



2016-09-15\_10-51-54.mp4



2016-09-15\_11-13-41.mp4

### Mediation, Civil and Criminal Histories

- This case was not eligible for mediation due to the severity of § 87(2)(b) injury and because § 87(2)(b) expressed an interest in filing a lawsuit.
- On September 6, 2016, a Notice of Claim request was submitted to the Comptroller’s Office, which returned negative results (BR 06).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint involving § 87(2)(b) (BR 08).
- PO Licata has been a member of the service for 3 years. There are two prior allegations against him stemming from a separate case that occurred in June of 2016, which remains open. § 87(2)(g)
- PO Baio has been a member of the service for 1 year. This is the first CCRB allegation against him.
- PO Bauert has been a member of the service for 4 years. There is one other allegation against her stemming from a case that occurred in August of 2016, which remains open. § 87(2)(g)
- PO Wintermute has been a member of the service for 4 years. There are four other allegations against him stemming from two cases, one of which occurred in 2014 and was not substantiated and the other of which occurred in 2016 and remains open. § 87(2)(g)

### **Potential Issues**

- § 87(2)(b) alleged that after he was stopped, officers placed his friend, § 87(2)(b) into handcuffs. Video footage (see above file labeled 2016-09-15\_10-51-54) documents that at least one other person at the scene was placed into handcuffs, but absent additional evidence it cannot be determined whether this person is § 87(2)(b) or not.  
§ 87(2)(b) could not provide contact information for § 87(2)(b). § 87(2)(b) thought he might be able to obtain § 87(2)(b)'s contact information and provide it at a future date, but did not do so despite multiple attempts to follow up.  
The witnesses contacted by the investigation, § 87(2)(b) and § 87(2)(b) could not provide any contact information for § 87(2)(b). § 87(2)(b)'s information was not listed on any available police documentation. No arrests or summonses resulted from this incident.  
In the absence of any additional identifying information for § 87(2)(b) applicable searches yielded negative results.  
As such, the investigation was not able to establish contact with § 87(2)(b).
- § 87(2)(b) provided the name of a friend, § 87(2)(b) who was with him when officers first stopped him. § 87(2)(b) was not able to provide a phone number, or address, or any other contact information for § 87(2)(b). Applicable searches for § 87(2)(b) yielded negative results. In the absence of any means by which to establish contact with this individual, the investigation was not able to establish contact with him.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- § 87(2)(b) (BR 09 and 10) described the officer who attempted to trip him to the ground as a white male, around 5'4" tall, with blond hair, glasses, in his 30s, uniformed, and with chubby build. Although PO Licata has black, not blond, hair, as a white male, 5'3" tall, 200 pounds, § 87(2)(b) old, he most closely matches this description (BR 11). Moreover, according to PO Licata, he alone halted § 87(2)(b) flight and brought him onto the ground.

PO Licata (BR 12) testified that when he first arrived to the scene, he stopped his vehicle at the northeastern corner of Lenox Avenue and West 143 Street, where the park begins. PO Licata observed PO Wintermute and PO Bauert chasing after § 87(2)(b) who was running in traffic heading southbound on Lenox Avenue. § 87(2)(b) ran to the sidewalk on the west side of Lenox Avenue and continued running southbound. PO Licata crossed from the eastern side to the western side of Lenox Avenue, where he physically halted § 87(2)(b)

§ 87(2)(g)

PO Licata's testimony was corroborated by his partner, PO Baio (BR 13), though PO Baio did not confirm that he observed § 87(2)(b) running in traffic.

PO Wintermute (BR 14) and PO Bauert (BR 15), however, testified that as they arrived to the scene driving northbound on Lenox Avenue, they saw that § 87(2)(b) was already being pursued by PO Licata and PO Baio on the sidewalk at the western side of Lenox Avenue. PO Wintermute and PO Bauert stopped their vehicle and ran to aid PO Licata and PO Baio. PO Wintermute and PO Bauert did not remember where they stopped their vehicle. They confirmed that there was a police vehicle on scene that § 87(2)(b) was later placed into as they attempted to investigate him. PO Wintermute denied knowing to whom this vehicle belonged. PO Bauert initially referred to the vehicle as hers, but later said she could not remember whose vehicle it was, as there were so many police vehicles on scene.

Video footage (see above file labeled 2016-09-15\_10-51-54) reflects that a running figure, identified by the investigation as § 87(2)(b) was physically halted by two police officers at the northwest corner of the intersection of West 143 Street and Lenox Avenue. The two police officers do not appear to be in pursuit behind § 87(2)(b) but meet him at that corner. Due to the distance of the camera from the incident location, these two police officers are not readily identifiable from the video alone. Approximately six seconds after § 87(2)(b) is brought to the ground, a marked police vehicle turns left from Lenox Avenue onto West 143 Street and parks at the northwest corner of that intersection; two uniformed officers exit. Again, due to the distance of the camera, no markings are distinguishable on the vehicle, nor are the two officers who exit immediately identifiable.

None of the officers interviewed could identify the officers inside this vehicle, although PO Licata was certain that the police vehicle did not belong to him, as he had left his parked on the eastern side of Lenox Avenue.

There is no indication from the video footage of any additional officers involved a pursuit of § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

### Allegations Not Pleaded

- § 87(2)(g)
- **Force:** § 87(2)(b) alleged that in the course of stopping him, PO Licata and PO Baio brought him onto the ground, and that the manner in which he landed on the ground caused a scrape (BR 17) and fracture to the fifth metacarpal of his right hand, for which he later sought treatment at § 87(2)(b) (BR 16). § 87(2)(g) there is no allegation that PO Baio and PO Licata used any further physical force beyond that necessary to halt § 87(2)(b) flight, § 87(2)(g)
- **Frisk:** Although not alleged by § 87(2)(b) PO Bauert acknowledged that she frisked § 87(2)(b) backpack prior to searching it. § 87(2)(g)
- **Search:** Although not alleged by § 87(2)(b) PO Wintermute acknowledged that after PO Bauert frisked and searched § 87(2)(b) backpack, PO Wintermute also visually inspected the interior of § 87(2)(b) backpack using his flashlight. Because it is contextually clear that PO Bauert initiated this frisk and search, no corresponding allegation has been pleaded against PO Wintermute.
- § 87(2)(b)

§ 87(2)(b)

**Allegation A – Abuse of Authority: Police Officer Joseph Licata stopped § 87(2)(b)**

**Allegation B – Abuse of Authority: Police Officer Joseph Licata frisked § 87(2)(b)**

It is not disputed that PO Licata physically halted § 87(2)(b) flight, § 87(2)(g)

§ 87(2)(b) (BR 09 and 10) said that before this incident, he was attending a basketball game in Colonel Charles Young Playground. § 87(2)(b) a § 87(2)(b) -old black male, 5’10” tall, and 125 pounds, was wearing green basketball shorts, a blue “Superman” t-shirt, a pair of sneakers, and carrying a backpack that was black, orange, and blue in color. § 87(2)(b) was with several of his friends and family members, including his cousin § 87(2)(b) his friend § 87(2)(b) his friend § 87(2)(b) his friend § 87(2)(b) § 87(2)(b) s brother, § 87(2)(b) and one of § 87(2)(b) father’s friends, § 87(2)(b) § 87(2)(b)

At approximately 9:40 p.m., shots were fired inside the park. Frightened by the sound of the shots, § 87(2)(b) began running away from the location. § 87(2)(b) was running with § 87(2)(b) who was directly next to him. § 87(2)(b) did not have any contact information for § 87(2)(b)

§ 87(2)(b) fled to the west side of Lenox Avenue and began running southbound on the sidewalk on its western side. As § 87(2)(b) reached the northeastern corner of West 143<sup>rd</sup> Street and Lenox Avenue, he saw an officer, identified by the investigation as PO Licata, standing at the corner. PO Licata asked § 87(2)(b) “Why are you running?” PO Licata did not otherwise say anything to § 87(2)(b) PO Licata then tripped § 87(2)(b) as he ran past by placing his leg in front of § 87(2)(b) legs. § 87(2)(b) began to stumble. A second officer, identified by the investigation as PO Baio, then approached from § 87(2)(b) side and pulled him forward to the ground by the straps of his backpack. § 87(2)(b) braced his fall with both of his hands.

Once on the ground, PO Licata pulled § 87(2)(b) hands behind his back and placed him into handcuffs. PO Licata asked § 87(2)(b) why he was running. § 87(2)(b) replied that he had been running because they were shooting. A crowd began to gather at the scene. § 87(2)(b) saw § 87(2)(b) in this crowd, but never saw him interacting with the police. The members of the crowd came within about three to four feet of § 87(2)(b) and asked the officers why § 87(2)(b) was being handcuffed. One member of the crowd, § 87(2)(b) was particularly vocal in asking why § 87(2)(b) had been stopped. Officers placed § 87(2)(b) into handcuffs. § 87(2)(b) did not see which officers placed him into handcuffs. § 87(2)(b) did not further see what occurred with § 87(2)(b) though he believed § 87(2)(b) was ultimately released and was not issued a summons or arrested.

§ 87(2)(b) sustained a scrape to the outside edge of his right hand, a bruise to his left knee, and bruising to his right hip from making contact with the ground. On § 87(2)(b), § 87(2)(b) went with his mother, § 87(2)(b) to § 87(2)(b) § 87(2)(b) and § 87(2)(b) reported to medical staff that § 87(2)(b) had experienced pain in his right elbow, right hand, and left knee after being tackled and handcuffed by the police. § 87(2)(b) was diagnosed with a closed fracture to the fifth metacarpal bone of his right hand (BR 16). § 87(2)(b) also had an abrasion on his left knee and an abrasion on the side of his right hand. A splint was applied to § 87(2)(b)

§ 87(2)(b) right hand. § 87(2)(b) was given Bacitracin and Ibuprofen for his injuries and was discharged. On § 87(2)(b), § 87(2)(b) went back to § 87(2)(b) complaining of resumed pain in his right hand. On June 28, 2016, during his CCRB interview, a photograph was taken of the healing scrape to the side of his hand (BR 17).

As was previously discussed, § 87(2)(b) could not provide any information for § 87(2)(b) or for § 87(2)(b) and the investigation therefore could not contact them.

The investigation obtained a telephone statement from § 87(2)(b) (BR 18). § 87(2)(b) was with § 87(2)(b) when the shots were fired in the park, and they began running away from the location southbound on Lenox Avenue together. § 87(2)(b) and § 87(2)(b) were about a half a block behind § 87(2)(b) who was also running southbound on the same side of Lenox Avenue. § 87(2)(b) confirmed that he saw PO Licata trip § 87(2)(b) onto the ground and then place him into handcuffs.

§ 87(2)(b) (BR 19) confirmed that he was also running away from the location of the shooting behind § 87(2)(b). Two officers that § 87(2)(b) could not describe brought § 87(2)(b) onto the ground. § 87(2)(b) saw a total of four police officers at the scene, three men and one woman. § 87(2)(b) was handcuffed on the ground and was then seated in a police vehicle and held for approximately three minutes before being released.

PO Licata (BR 12) said that he received a report via radio of shots fired in the park at West 145 Street and Lenox Avenue. PO Licata also believed it was specified via radio that someone was running southbound. PO Licata could not recall if any pedigree information of a possible perpetrator was included and did not think any clothing description was given.

PO Licata drove to the scene with PO Baio. As they arrived to the scene, PO Licata observed a male running away from the location. The male was running southbound through traffic towards the west side of Lenox Avenue. The male was being pursued by two police officers, who PO Licata identified as PO Bauert and PO Wintermute. PO Licata described the running male as black, wearing a t-shirt, shorts, and a black backpack. Although the scene was crowded with people as there were approximately 100 people in the park, no one else was running except this male with the black backpack. The other people present appeared fairly calm.

PO Licata attempted to join the chase by crossing from the eastern side of Lenox Avenue to its western side. PO Licata attempted to cut off the male by grabbing him with his left arm. PO Licata said nothing to the male before attempting to stop him. The male, identified by the investigation as § 87(2)(b) ran into PO Licata's arm, causing both § 87(2)(b) and PO Licata to fall onto the ground. PO Baio approached soon thereafter and played no role in bringing § 87(2)(b) onto the ground.

Once on the ground, PO Licata handcuffed § 87(2)(b) as he had been running away from the scene where shots were fired. PO Licata patted down § 87(2)(b) waistband. PO Licata asked § 87(2)(b) why he had been running. § 87(2)(b) did not respond that PO Licata could recall. PO Bauert and PO Wintermute reached PO Licata shortly after § 87(2)(b) and PO Licata fell to the ground. PO Bauert and PO Wintermute did not communicate to PO Licata why they had been chasing § 87(2)(b) and PO Licata did not speak to them about what had occurred as the incident happened "so fast." PO Licata believed "everybody knew" that their pursuit of § 87(2)(b) was in regards to the shots fired job reported over the radio. PO Licata did not consider § 87(2)(b) to be under arrest.

Once § 87(2)(b) was handcuffed, PO Licata and other officers attempted to raise over radio for a description of the perpetrator. As there were numerous officers responding to the job it was too chaotic to obtain any further information. PO Licata did not obtain any documentation from § 87(2)(b) as he did not initiate his stop. PO Licata assumed that an officer obtained § 87(2)(b) identification, but did not actually observe any officer do so. § 87(2)(b) was eventually released from the scene. PO Licata did not prepare any documentation in regards.

PO Baio (BR 13) generally confirmed PO Licata's statement. PO Baio did not remember any information being relayed aside from that shots had been fired and the location. PO Baio said that upon arriving to the scene and stopping their vehicle at the corner of West 143<sup>rd</sup> Street and Lenox Avenue, they saw PO Bauert and PO Wintermute pursuing a male wearing a backpack on the west side of Lenox Avenue, and that PO Licata reached the western side of Lenox Avenue first and brought § 87(2)(b) onto the ground. PO Baio did not remember if PO Bauert and PO Wintermute ever communicated to him and PO Licata why they had been pursuing § 87(2)(b).

PO Bauert (BR 15) said that she was at the stationhouse with PO Wintermute when they heard the report of shots fired via radio. No other information was relayed. No description of a perpetrator was given. PO Bauert and PO Wintermute drove to the scene. PO Bauert did not remember which of them was operating the vehicle. As they approached West 143<sup>rd</sup> Street driving northbound on Lenox Avenue, PO Bauert observed PO Licata and his partner chasing after two males. The two males ran from the east to the west side of Lenox Avenue up at the intersection of West 144<sup>th</sup> or West 145<sup>th</sup> Street, then turned and began running southbound on the west side of Lenox Avenue. PO Licata and his partner were a few feet behind the males. PO Bauert could not describe these males, except that one of them appeared to be wearing a black backpack.

The park where the shooting occurred was full of people at the time of this incident, many of whom were scattering in multiple directions trying to flee the park; however, these two males were the only people running in this particular direction.

PO Bauert and PO Wintermute stopped their vehicle and exited. PO Bauert did not remember where they stopped their vehicle. PO Bauert and PO Wintermute ran to the scene. PO Bauert ran behind PO Licata but could not estimate at what distance. As they ran, PO Bauert tried to ask PO Licata, "Is everything okay? What's going on? What do you have?" PO Licata replied that he did not know yet. PO Bauert asked if it was related to the shooting. PO Licata replied that it could be.

PO Licata then brought the male wearing the backpack onto the ground. PO Bauert estimated that she was pursuing with PO Licata for less than a second before PO Licata brought the male onto the ground. PO Bauert did not see exactly how he did so, i.e. if he approached him from behind or somehow got ahead of or to the side of him. PO Bauert had no knowledge of what happened to the second male who had been running. PO Bauert had no recollection of PO Licata providing further information about why he had chased the male with the backpack. Once on the ground, PO Licata handcuffed the male. PO Bauert had no knowledge of why the male was being handcuffed. PO Bauert did not know if any officer reported the stop via radio. PO Bauert did not know if any officer obtained the male's identification. PO Bauert did not know if any documentation of this incident was prepared. PO Bauert noted that it would have been the responsibility of the officer who initiated the stop to take these steps.

PO Wintermute (BR 14) broadly corroborated PO Bauert's statement, with the following discrepancies noted. PO Wintermute also saw PO Licata and PO Baio pursuing two males, one



with a backpack, though he described them as already being on the west side when PO Wintermute approached. PO Wintermute believed that he and PO Bauert pulled a u-turn to reach the western side of Lenox Avenue. PO Wintermute believed they may have ultimately stopped their vehicle on West 143<sup>rd</sup> Street. PO Wintermute said that by the time he and PO Bauert reached the scene, PO Licata already had one of the male with the backpack, § 87(2)(b) on the ground. PO Wintermute did not see exactly how the second male was stopped, but believed PO Baio was standing with this second male, and thought this second male may have come to a stop voluntarily after seeing that § 87(2)(b) had been brought to the ground. PO Wintermute had no conversation with PO Licata about why he had been chasing the two males, and felt it was mutually understood that the males had been stopped in relation to the report of shots fired.

The EVENT report (BR 20) and communications CD (BR 21 to 22) reflects that this incident was reported as a pick-up by the 32<sup>nd</sup> Precinct Safety Unit, identified by the investigation as PO Acosta and PO Treuhaft. No description of a perpetrator was provided. At 1:19 minutes, a male voice whose unit designation is not stated says, "10-5?" At 1:27 minutes, a female voice who does not identify her unit description says, "Direction of flight?" The 32<sup>nd</sup> Precinct Safety Unit replies at 1:30 minutes, "[Unintelligible], everybody just running all over the place." At 1:39 minutes, a male voice who does not identify his unit says, "Southbound Lenox Avenue, southbound Lenox Avenue." The 32<sup>nd</sup> Precinct Lieutenant requests a Level 1 Mobilization.

At around 9 minutes into the recording, the dispatcher asks the 32<sup>nd</sup> Precinct Lieutenant if they are looking for a perpetrator. The 32<sup>nd</sup> Precinct Lieutenant responds, "Hold on." At 9:22 minutes, 32<sup>nd</sup> Precinct Safety Unit, a male voice, tells the dispatcher, "All I got is that the male ran south on Lenox. No description. It's a big crowd, nobody knows anything."

At 19:19 minutes into the call – or what would have likely been around 10:01 p.m. – a male voice who does not identify his unit requests the 32<sup>nd</sup> Precinct Sergeant is on the air, and asks him to walk to 143<sup>rd</sup> Street and Lenox Avenue. The 32<sup>nd</sup> Precinct 1<sup>st</sup> Sergeant asks to have cars 85 him to 143<sup>rd</sup> Street and Lenox Avenue. 32<sup>nd</sup> Precinct Sector David says that they are en route. There are no further references to this job on the recording. There is no explicit mention of any person being stopped in regards.

An AIDED (BR 23), UF-61 (BR 24), and UF-49 (BR 25) were prepared in relation to this incident, but these documents make no mention of the stop of § 87(2)(b). The UF-49 notes that the victim was not cooperative and makes no mention of any possible perpetrator. No UF-250 could be located (BR 26 and 27).

Video footage of this incident was taken from Grini's Grill, a restaurant located on the southern side of West 143<sup>rd</sup> Street, with a camera facing towards Lenox Avenue. 10 video files were provided, only two of which are relevant to the investigation and have been included in this report. The video is in color and lacks audio. The restaurant is at some remove from the intersection of West 143<sup>rd</sup> Street and Lenox Avenue, and it is dark outside at the time of this incident; it is therefore not possible to identify individuals by their appearance on video alone.

Beginning at 9:42:28 minutes in the first file (see above file labeled 2016-09-15\_10-51-54.mp4), multiple marked police vehicles are visible driving northbound on Lenox Avenue, presumably responding to the report of shots fired at the park at 145<sup>th</sup> Street and Lenox Avenue. Between 9:42:50 minutes and 9:43:10 minutes, approximately three people appear to be jogging southbound on the west side of Lenox Avenue before exiting the frame. At 9:43:25 minutes, a

black male dressed in a white t-shirt appears to round the corner onto West 143<sup>rd</sup> Street from Lenox Avenue.

At 9:43:22 minutes, two figures are observed crossing from the northeast corner of Lenox Avenue and West 143<sup>rd</sup> Street to the northwest corner in the crosswalk. Although these figures are too distant from the camera to be identified from video alone, based upon civilian and officer testimony, these two figures have been identified as PO Baio and PO Licata.

At 9:43:26 minutes, a second figure is visible sprinting southbound on Lenox Avenue. Due to the speed at which this figure moves, the darkness of the footage, and the camera's distance, it is not possible to describe or identify this figure, but contextually it appears to be § 87(2)(b). PO Licata and PO Baio simultaneously reach the northwest corner of West 143<sup>rd</sup> Street and Lenox Avenue.

At 9:43:27 minutes, PO Licata appears to make physical contact with § 87(2)(b) (although PO Licata cannot be clearly identified from the video alone, he has been identified based upon officer and civilian testimony). Where exactly contact is made is not discernible. § 87(2)(b) appears to fall forward. Once he falls forward, he is no longer visible to the camera, as he is eclipsed by a vehicle stopped at the curb at the north side of West 143<sup>rd</sup> Street; it is therefore not clear how he lands on the ground. PO Licata appears to remain standing. A third figure, who based upon civilian and officer testimony would appear to be PO Baio, then runs to where § 87(2)(b) is on the ground and appears to kneel next to him. There appears to be movement at 9:43:31 minutes; while it is not clear what exactly is occurring at this time, it appears that PO Baio and PO Licata both go fully onto the ground at this time.

Simultaneously, or at 9:43:26 minutes, a marked police vehicle is visible driving northbound on Lenox Avenue and beginning to turn left onto West 143<sup>rd</sup> Street. At 9:43:31 minutes, the marked police vehicle has pulled to the northern side of West 143<sup>rd</sup> Street, further obstructing PO Licata, PO Baio, and § 87(2)(b). At 9:43:33 minutes, an officer exits through the front passenger door of the police vehicle. At 9:43:34 minutes, an officer exits through the driver's door and jogs around the front of the police vehicle to where PO Licata, PO Baio, and § 87(2)(b) are. It is not possible to identify these officers from video footage alone. A few civilians, most of whom appear to be males, are standing nearby on the corner.

The officers appear to be gathered over § 87(2)(b) on the ground for a period of time. Additional civilians begin to arrive to the corner. At 9:44:30 minutes, a male wearing a white t-shirt appears to step closer to where the officers have § 87(2)(b) on the ground and takes off his t-shirt to reveal a white tank top underneath. There are then so many figures at the corner that it is difficult to discern what is occurring. At 9:44:57 minutes, two police officers – they are not identifiable from video footage alone – appear to grip the male wearing the white tank top from his arms and emerge with him from the crowd, moving towards the hood of the police vehicle. The two officers push the male in the tank top front first on the hood of the vehicle and one of them appears to place him into handcuffs. The male writhes on the hood of the police vehicle. At 9:45:44 minutes, two officers appear to move another figure towards the rear passenger side of the marked police vehicle. The two officers and the figure are not readily identifiable, nor even describable, from video alone. At 9:46:12 minutes, an officer appears to escort the male in the white tank top around the passenger side of the marked police vehicle to its rear driver side fender.

Nothing is then discernible until 9:48:36 minutes, when an older male in a gray t-shirt with black long sleeves walks away from the scene towards the southern side of West 143<sup>rd</sup> Street with the male in the white tank top. At 9:49:09 minutes, uniformed officers are visible standing at the passenger side of the marked police vehicle. At 9:49:50 minutes, the older male in the gray t-shirt walks back to the northern side of West 143<sup>rd</sup> Street. At 9:51:40 minutes, an officer appears to shake the hand on the older male wearing the gray t-shirt. At 9:52:05 minutes, officers appear to re-enter their marked police vehicle and by 9:52:15 minutes are driving away westbound on West 143<sup>rd</sup> Street.

At 10:05:07 minutes (see second file above labeled 2016-09-15\_11-13-41.mp4), a marked police vehicle arrives at the intersection of West 143<sup>rd</sup> Street and Lenox Avenue, stopping at the eastern side of the intersection. Two police officers approach the marked vehicle on foot. This may be the aforementioned Sergeant responding to the location with Sector D as per the EVENT and communications CD, though the vehicle is too far from the camera to identify conclusively. At 10:06:03 p.m., a second police vehicle arrives. Nothing further is depicted.

Reasonable suspicion of criminality is required for a forcible stop. People v. De Bour, 40 N.Y.2d 201 (1976) (BR 28) An officer must have reasonable suspicion that a suspect is armed to conduct a frisk. *Ibid.* Police pursuit of an individual must be supported by reasonable suspicion that the person is, was, or is about to engage in criminal activity. Flight alone, or even in conjunction with equivocal circumstances, is insufficient to justify police pursuit. People v. Holmes, 81 N.Y. 2d 1056 (BR 29).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(f)

§ 87(2)(g)

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§ 87(2)(g)

**Allegation C – Abuse of Authority: Police Officer Margaret Bauert questioned** § 87(2)(b)

**Allegation D – Abuse of Authority: Police Officer Margaret Bauert searched** § 87(2)(b)  
**s backpack.**

It is not disputed that PO Bauert searched § 87(2)(b) backpack, § 87(2)(g)

§ 87(2)(b) (BR 09 and 10) said that he was handcuffed and placed into the police vehicle while still wearing his backpack. § 87(2)(b) was sitting inside the vehicle for approximately 10 minutes before PO Bauert approached and told § 87(2)(b) to calm down. § 87(2)(b) may not have appeared calm as he was sweating from running and the heat inside the police vehicle. PO Bauert instructed § 87(2)(b) to step out of the police vehicle. § 87(2)(b) did so. PO Bauert asked § 87(2)(b) how old he was. § 87(2)(b) told her that he was § 87(2)(b). PO Bauert then requested his permission to search his backpack. § 87(2)(b) said, “Yes.”

PO Bauert tried to pull § 87(2)(b) backpack down off of his shoulders, apparently not realizing that § 87(2)(b) was still handcuffed. PO Bauert pulled the backpack straps back up over § 87(2)(b) shoulders and searched it as he wore it. PO Bauert removed a pair of sneakers that § 87(2)(b) had in the backpack and placed them on the police vehicle. PO Bauert then used a flashlight to complete the search of the backpack. § 87(2)(b) did not see if PO Bauert removed any items from his backpack. None of the officers on scene ever requested § 87(2)(b) identification or to his knowledge of obtained it. None of the officers asked § 87(2)(b) for his name. PO Bauert searched the backpack for approximately two minutes before § 87(2)(b) was released.

As was previously discussed, PO Bauert (BR 15) said that she observed PO Licata in pursuit of § 87(2)(b). PO Bauert did not know why PO Licata was pursuing § 87(2)(b) and attempted to ask him what he had, and whether what he had was related to the shooting as they ran. According to PO Bauert, PO Licata’s replies were not conclusive: he did not know what he

had, and it was maybe related to the shooting. PO Bauert did not obtain any further information from PO Licata.

PO Bauert said that once § 87(2)(b) was handcuffed, officers – possibly including PO Licata, though PO Bauert was unsure – placed him into a police vehicle. PO Bauert initially said that the police vehicle was hers, but later retracted this and said she was not sure to whom this vehicle was assigned. After § 87(2)(b) was placed into the police vehicle, PO Bauert told the officers who placed him inside, “Take him back out. He’s got a bookbag on.” PO Bauert requested that an officer – again, she believed it was PO Licata – remove § 87(2)(b) from his handcuffs.

PO Bauert told § 87(2)(b) “I’m checking your bookbag.” PO Bauert frisked the bookbag’s exterior. PO Bauert did so because the male had been observed fleeing the scene where shots were fired and pursued by other officers, and consequently there was a possibility that he was armed. PO Bauert had no other reason to believe § 87(2)(b) might have been armed. While PO Bauert frisked the backpack, she felt a hard object around the bottom of § 87(2)(b) backpack. The object felt akin to PO Bauert’s radio, insofar as she could fit her hand around it, and was a little bit heavy, though she could not tell what its shape was.

Believing that this object might have been a weapon, PO Bauert opened the bag and looked through it. The backpack was filled with a variety of sports equipment, but PO Bauert could not recall what type of equipment exactly, nor could she recall what the object she felt turned out to be. No contraband or weapons were recovered from the search. PO Bauert had no recollection of obtaining § 87(2)(b) consent prior to frisking and searching him.

PO Wintermute (BR 14) broadly confirmed PO Bauert’s testimony. As was previously mentioned, PO Wintermute confirmed that it was PO Licata who was pursuing § 87(2)(b) first. PO Wintermute did not, however, corroborate PO Bauert’s testimony that PO Licata told them that § 87(2)(b) was “maybe” related to the shooting, and instead said that it seemed to be a mutual unspoken understanding that § 87(2)(b) had been stopped in relation to the report of shots fired.

PO Wintermute denied knowing to whom the police vehicle that § 87(2)(b) was placed in was assigned. PO Wintermute did not personally place § 87(2)(b) in the police vehicle, and did not know exactly why he was, though he noted that it may have been to contain him from the disorderly crowd of people that was gathering. PO Wintermute saw PO Bauert take § 87(2)(b) back out of the vehicle and felt the exterior of his backpack. PO Bauert announced, “I feel a hard object in here.” PO Wintermute did not hear PO Bauert request or obtain consent from § 87(2)(b) prior to frisking and searching his bag. While PO Bauert opened the backpack and looked inside, PO Wintermute briefly visually inspected the backpack using his flashlight and saw that it contained miscellaneous sports equipment that he could not identify. PO Wintermute added that it was “not a good tactical move” to place a person into an RMP without first ensuring that they were not armed.

PO Licata (BR 12) said that it was PO Bauert’s decision to place § 87(2)(b) into the police vehicle. PO Licata later saw PO Bauert feeling the exterior of and looking inside of § 87(2)(b) bag. § 87(2)(b) was released once PO Bauert determined that he was “clean,” or within a few minutes.

PO Baio (BR 13) said that he was primarily conducting crowd control during this incident, did not observe § 87(2)(b) be placed into a police vehicle, and did not observe PO Bauert frisking or searching § 87(2)(b) backpack.

Video footage is too distant from the scene to clearly capture this allegation.

Officers are entitled to rely on the information received from a fellow officer, as this information is presumed reliable and accurate. People v. Powell, 101 A.D.3d 756 (2<sup>nd</sup> Dept., 2012) (BR 39) A frisk is permissible if an officer possesses a particularized reasonable suspicion that a suspect is armed. People v. De Bour, 40 N.Y.2d 210 (1976) (BR 28) An officer is permitted to search a person when a limited frisk for weapons reveals an object which feels like a weapon. People v. Rodriguez, 856 NYS 2.d 502 [Sup. Bronx] (2008) (BR 30) An officer must have founded suspicion that criminality is afoot to request to search an individuals' belongings. People v. Hollman, 79 N.Y.2d 181 (1992) (BR 31) Consent forced by police coercion is not voluntary. People v. Saad, 19 Misc.3d 1103 (Crim. Ct. Queens Cty.) (2008) (BR 32)

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

**Allegation E – Abuse of Authority: Officers stopped § 87(2)(b)**

§ 87(2)(b) (BR 09 and 10) said that after he was stopped other civilians began to gather at the northeast corner of West 143<sup>rd</sup> Street and Lenox Avenue. § 87(2)(b) friend, § 87(2)(b) was in the crowd. All members of the crowd were asking why § 87(2)(b) had been stopped, but § 87(2)(b) was particularly vocal, and eventually officers placed § 87(2)(b) into handcuffs. § 87(2)(b) could not see which officers placed § 87(2)(b) into handcuffs, and did not see what further happened to § 87(2)(b).

As was previously discussed, § 87(2)(b) was unable to provide any contact information for § 87(2)(b) and the investigation was not ultimately able to establish contact with him.

Video footage (see above file labeled 2016-09-15\_10-51-54) documents that at least one other individual aside from § 87(2)(b) a black male dressed in a white tank top, was placed into handcuffs at the scene, but absent further evidence it cannot be determined if this is § 87(2)(b) or another individual. Furthermore, due to the camera's distance from the incident location, it cannot be determined which officers are interacting with this individual.

PO Bauert (BR 15), PO Licata (BR 12), and PO Baio (BR 13) had no recollection of anyone aside from § 87(2)(b) being placed into handcuffs, and reviewing the video footage did not refresh their recollection.

PO Wintermute (BR 14) said he believed § 87(2)(b) was fleeing from the park with a second individual who he could not describe or identify, and believed this person stopped voluntarily after seeing PO Licata take § 87(2)(b) onto the ground. PO Wintermute thought this individual was standing with PO Licata's partner. This second male was placed into handcuffs. PO Wintermute could not recall by whom. PO Wintermute aided another officer – again, PO Wintermute could not recall which – in escorting this male from one side of the RMP to another to contain him from the crowd. PO Wintermute attempted to ask him questions, such as where he had been going, but the male was too angry to respond except with profanity, such as, “Fuck the NYPD.” PO Wintermute did not know what ultimately happened to this male. PO Wintermute reviewed the video footage of this incident but could not identify the individual in the white tank top as the male who was handcuffed.

No UF-250 was completed to document this interaction.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

[Redacted text block]

Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date